

May 28, 1996

### **Advisory Opinion 1996 - No. 6**

This advisory opinion is requested by Timothy A. Martin, Chief Clerk of the House of Representatives. Mr. Martin has waived the right to confidentiality afforded to persons requesting advisory opinions.

#### **QUESTION**

The Board received a letter from Mr. Martin which in pertinent part reads as follows

*I write to request an advisory opinion regarding the mailing restrictions found at RCW 42.17.132.*

#### ***Background***

*RCW 42.17.132 . . . limits legislators' communications with constituents. Similar provisions do not apply to other elected officials.*

*Until little less than a year ago, the restrictions of RCW 42.17.132 applied during the last twelve months of the terms of office of state legislators.*

*By amendment proposed on the Senate floor in 1995, the time period for the restrictions was changed from the last twelve months of office (an easily calculated time period) to "the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office" (a time period susceptible to varying interpretations). This language amended a 19,000-word omnibus bill . . . [and] was considered by neither a House nor a Senate committee. The rather awkward wording of the amendment generated significant discussion among attorneys in the House and Senate.*

*After discussions with counsel, the Chief Clerk of the House, the Secretary of the Senate and House Production Services Staff Coordinator Dan Monohan sent e-mail messages to staff informing them of the new time period for restrictions on legislative correspondence. . . .*

*The e-mail messages referenced above are the only materials dealing with the new time*

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Footnote, attachments, and underscore omitted.

*period published and communicated by either the House or the Senate prior to December 1995.*

*The e-mail messages directed to legislative staff informed them as follows:*

*Mailings made after December 5, 1995, will be counted as one of the two allowed in the twelve-month period preceding the last day for certification. Therefore, any pre-session questionnaires or newsletters must be mailed by December 5, 1995.*

*Based on the December 5, 1995 mailing deadline, both the House and the Senate established internal timelines for pre-session mailings to be processed internally and delivered to the Department of Printing (DOP), where applicable, for printing and mailing. The internal deadline for delivery of mailings to DOP, in order to ensure that they would be printed and mailed by December 5, 1995, was set by both the House and the Senate as November 15, 1995. All legislators who sent mailings in November and December 1995 substantially complied with the internal production timeline and the delivery deadline to DOP.*

*The only functions undertaken by DOP with regards to legislative mailings are printing and mailing. From November, 1995 through December 5, 1995, DOP processed a large number of legislative mailings, in all cases delivering finished mailings to the post office immediately after printing was completed. A number of legislative mailings were delivered by DOP to the post office on December 5, 1995 to be mailed that day; each of those mailings had been delivered to DOP for processing weeks earlier.*

### ***Issue***

*An issue has arisen as to whether or not mailings mailed by DOP on December 5, 1995, under the circumstances outlined above, will be counted as one of the two mailings permitted during the twelve-month period set forth in recently-amended RCW 42.17.132. In each instance, staff who processed those mailings on behalf of members (a) relied upon the e-mail messages provided by administration and (b) delivered the mailings to DOP well in advance of December 5th for printing and mailing. My request is that the Legislative Ethics Board issue an opinion in this regard.*

### ***Request for Expedited Opinion***

*Members are now preparing end-of-session newsletters to inform constituents of the issues that were considered and decided (or not decided, as the case may be) during the 1996 session.*

*In order that these newsletters will be mailed before the mailing deadline found in RCW 42.17.132, they must be delivered to DOP for printing and mailing well before April 18, 1996, which is the date set for the next meeting of the Legislative Ethics Board. Therefore, I respectfully request issuance of an expedited opinion.*

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## OPINION

On April 8, 1996, based on the facts stated in the Question, the Board responded to Mr. Martin's request for an expedited opinion by deciding that December 5, 1996 was the last day for mailing legislative newsletters without the newsletters being counted as one of the two newsletters permitted in RCW 42.16.132. With this opinion, we provide our reason for that decision.

RCW 42.17.132 provides as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

The legislator may mail one mailing no later than thirty days after the start of a regular legislative session and one mailing no later than sixty days after the end of a regular legislative session of identical newsletters to constituents.

. . .

A definitive response to Mr. Martin's question would require that we determine the "last day for certification of the election results" of the 1996 legislative elections. Unfortunately, that day cannot be reasonably determined. There are several possible "last days" for this certification, including the following or a combination of the following:

**RCW 29.62.020:** On the "fifteenth day after . . . [the] general election the [county] canvassing boards shall complete the canvass and certify the results."

**RCW 29.62.120:** ". . . not later than thirtieth day after the election, the secretary of state shall make a canvass of . . . the returns . . . and make out a statement thereof . . . and transmit a certified copy thereof to the governor."

Assuming that the "last day" is determined under one of above statutes, the next step is

to compute the "twelve-month period." We have reviewed numerous methods to compute this period, including the following:

1. We could count months beginning with the day before the "last day" for certification of election results. Under this method, for example, if RCW 29.62.120 is used to determine the "last day," then the twelve-month period would have begun on December 5, 1995.
2. We could count months beginning with the calendar month before the "last day" for certification of election results. Under this method, for example, if RCW 29.62.120 is used to determine the "last day," then the twelve-month period would have begun December 1, 1995.
3. We could count months beginning with the day of certification of election results. While this method seems inconsistent with the statute, there is legislative history to support it. (See: Final Senate Bill Report on Engrossed Substitute Senate Bill 5684, 1995 Reg. Session.) Under this method, for example, if RCW 29.62.120 is used to determine the "last day," then the twelve-month period would have begun December 6, 1995.

It is difficult to imagine how this statute could be more unclear. Because RCW 42.17.132 can be interpreted in so many different ways, because it is necessary that we construe three different statutes to determine possible dates, because the ambiguous language in RCW 42.17.132 is new and we have not previously interpreted it, and because legislators reasonably relied on the December 5th mailing deadline provided by legislative staff, we conclude that any legislative newsletter mailed before December 6, 1995 will not be included within the statute's twelve-month period applicable to the 1996 legislative elections.

Our opinion is limited to the statute's twelve-month period applicable to the 1996 legislative elections. We do not decide when the period will begin for legislative elections after the 1996 elections. We suggest the Legislature consider clarifying this statute so that it states the specific date when the twelve month period begins and the specific date when it ends.